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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

7/1/08

DEPUTY

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9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11 Barbara Hubbard,  
12  
13

14 Plaintiff,

15 vs.

16 C.V. Center, Inc.; Jamba Juice  
17 Company dba Jamba Juice #603;  
18 Casual Dining Services, Inc. dba  
19 Pizzeria Uno; Mervyn's, LLC;  
20 Starbucks Corporation dba Starbucks  
21 Coffee #6632; J.C. Penney  
22 Company, Inc. dba JCPenney #1274;  
23 Serler, Inc. dba Subway #31595;  
24 Manna Development Group, LLC  
25 dba Panera Bread Café #4284,

26 Defendants.

No.

'08 CV 471 JAH LSP

Plaintiff's Complaint

ORIGINAL

CR

I. SUMMARY

1. Ther is a civil rights action by plaintiff Barbara Hubbard ("Hubbard") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complexes known as:

Chula Vista Center – Common Areas

555 Broadway

Chula Vista, CA 91910

(hereafter "the Chula Vista Center Common Area Facility")

Jamba Juice #603

555 Broadway, Suite #135

Chula Vista, CA 91910

(hereafter "the Jamba Juice Facility")

Pizzeria Uno

555 Broadway, Suite #1078

Chula Vista, CA 91910

(hereafter "the Pizzeria Uno Facility")

Mervyn's

555 "I" Street

Chula Vista, CA 91910

(hereafter "the Mervyn's Facility")

Starbucks Coffee #6632

555 Broadway, Suite 100B

Chula Vista, CA 91910

(hereafter "the Starbucks Facility")

JCPenney #1274

591 Broadway

Chula Vista, CA 91910

(hereafter "the JCPenney Facility")

1 Subway #31595  
2 555 Broadway, Suite #145  
3 Chula Vista, CA 91910  
4 (hereafter "the Subway Facility")

5 Panera Bread Café #4284  
6 555 Broadway, Suite #127  
7 Chula Vista, CA 91910  
8 (hereafter "the Panera Bread Facility")

9 2. Pursuant to the Americans with Disabilities Act of 1990, ( 42 U.S.C.  
10 §§ 12101 et seq.), and related California statutes, Hubbard seeks damages,  
11 injunctive and declaratory relief, and attorney fees and costs, against:

- 12 • C.V. Center, Inc. (hereinafter the "Chula Vista Center Defendant")
- 13 • Jamba Juice Company dba Jamba Juice #603 and C.V. Center, Inc.  
14 (hereinafter the "Jamba Juice Defendants")
- 15 • Casual Dining Services, Inc. dba Pizzeria Uno and C.V. Center, Inc.  
16 (hereinafter the "Pizzeria Uno Defendants")
- 17 • Mervyn's, LLC dba Mervyn's and C.V. Center, Inc. (hereinafter the  
18 "Mervyn's Defendants")
- 19 • Starbucks Corporation dba Starbucks Coffee #6632 and C.V. Center, Inc.  
20 (hereinafter the "Starbucks Defendants")
- 21 • J.C. Penney Company, Inc. dba JCPenney #1274 and C.V. Center, Inc.  
22 (hereinafter the "JCPenney Defendants")
- 23 • Serler, Inc. dba Subway #31595 and C.V. Center, Inc. (hereinafter the  
24 "Subway Defendants")
- 25 • Manna Development Group, LLC dba Panera Bread Café #4284 and C.V.  
26 Center, Inc. (hereinafter the "Panera Bread Defendants")

1 II. JURISDICTION

2 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and  
3 1343 for ADA claims.

4 4. Supplemental jurisdiction for claims brought under parallel  
5 California law—arising from the same nucleus of operative facts—is predicated  
6 on 28 U.S.C. § 1367.

7 5. Hubbard's claims are authorized by 28 U.S.C. §§ 2201 and 2202.

8 III. VENUE

9 6. All actions complained of herein take place within the jurisdiction  
10 of the United States District Court, Southern District of California, and venue is  
11 invoked pursuant to 28 U.S.C. § 1391(b), (c).

12 IV. PARTIES

13 7. The Chula Vista Center Defendant owns, operates, or lease the  
14 Chula Vista Center Common Area Facility, and consists of a person (or persons),  
15 firm, or corporation.

16 8. The Jamba Juice Defendants own, operate, or lease the Jamba Juice  
17 Facility, and consist of a person (or persons), firm, or corporation.

18 9. The Pizzeria Uno Defendants own, operate, or lease the Pizzeria  
19 Uno Facility, and consist of a person (or persons), firm, or corporation.

20 10. The Mervyn's Defendants own, operate, or lease the Mervyn's  
21 Facility, and consist of a person (or persons), firm, or corporation.

22 11. The Starbucks Defendants own, operate, or lease the Starbucks  
23 Facility, and consist of a person (or persons), firm, or corporation.

24 12. The JCPenney Defendants own, operate, or lease the JCPenney  
25 Facility, and consist of a person (or persons), firm, or corporation.

26 13. The Subway Defendants own, operate, or lease the Subway Facility,  
27 and consist of a person (or persons), firm, or corporation.

1           14. The Panera Bread Defendants own, operate, or lease the Panera  
2 Bread Facility, and consist of a person (or persons), firm, or corporation.

3           15. Hubbard has multiple conditions that affect one or more major life  
4 functions. She requires the use of motorized wheelchair and a mobility-equipped  
5 vehicle, when traveling about in public. Consequently, Hubbard is "physically  
6 disabled," as defined by all applicable California and United States laws, and a  
7 member of the public whose rights are protected by these laws.

8   V. FACTS

9           16. The Chula Vista Center Common Area Facility is an establishment  
10 serving food and drink, open to the public, which is intended for nonresidential  
11 use and whose operation affects commerce.

12           17. The Jamba Juice Facility is an establishment serving food and drink,  
13 open to the public, which is intended for nonresidential use and whose operation  
14 affects commerce.

15           18. The Pizzeria Uno Facility is an establishment serving food and  
16 drink, open to the public, which is intended for nonresidential use and whose  
17 operation affects commerce.

18           19. The Mervyn's Facility is a sales or retail establishment, open to the  
19 public, which is intended for nonresidential use and whose operation affects  
20 commerce.

21           20. The Starbucks Facility is an establishment serving food and drink,  
22 open to the public, which is intended for nonresidential use and whose operation  
23 affects commerce.

24           21. The JCPenney Facility is a sales or retail establishment, open to the  
25 public, which is intended for nonresidential use and whose operation affects  
26 commerce.

1           22. The Subway Facility is an establishment serving food and drink,  
2 open to the public, which is intended for nonresidential use and whose operation  
3 affects commerce.

4           23. The Panera Bread Facility is an establishment serving food and  
5 drink, open to the public, which is intended for nonresidential use and whose  
6 operation affects commerce.

7           24. Hubbard visited these facilities and encountered barriers (both  
8 physical and intangible) that interfered with—if not outright denied—her ability  
9 to use and enjoy the goods, services, privileges, and accommodations offered at  
10 all of the facilities.

11           25. To the extent known by Hubbard, the barriers at the Chula Vista  
12 Center Common Area Facility included, but are not limited to, the following:

13 *Restroom in Common Area:*

- 14           • The water closet's flush valve is not on the wide side;
- 15           • There is no handle mounted below the lock on the interior of the
- 16           accessible stall door;
- 17           • The stall door is not self-closing;
- 18           • The toilet tissue dispenser protrudes into the clear maneuvering space
- 19           needed to access the water closet;
- 20           • The trash receptacle encroaches into the clear floor and maneuvering
- 21           space needed to access the water closet;
- 22           • The toilet tissue dispenser and disposable seat cover dispenser are
- 23           obstructions to the use of the side grab bar;
- 24           • The toilet tissue dispenser is mounted at more than 19 inches from the
- 25           floor;
- 26           • The side grab bar is not mounted 12 inches from the back wall;
- 27           • The pipes underneath the lavatory(ies) are either not properly wrapped or
- 28           not wrapped at all;

- 1 • The soap dispensers (both) are mounted on the wall behind the lavatories
- 2 and out of the required reach ranges;
- 3 • The soap dispensers (both) are mounted at more than 40 inches from the
- 4 floor;
- 5 • The paper towel dispenser is mounted out of the required reach range and
- 6 at more than 40 inches from the floor;
- 7 • The mirror is mounted at more than 40 inches from the floor;
- 8 • The trash receptacle interferes with the required strike side clearance on
- 9 the pull side of the restroom door;

10 *Parking in Common Area:*

- 11 • There is a built-up curb ramp protruding into the access aisle, causing the
- 12 access aisle to have a slope and cross slope greater than 2.0% (near the
- 13 Mervyn's Facility);
- 14 • The access aisle adjacent to the van accessible stall is not the correct size
- 15 (too narrow)(near the Mervyn's Facility)
- 16 • The signage designating a space as "van accessible" is not correct
- 17 (throughout the entire parking area);
- 18 • There are no detectable warnings where the accessible path of travel
- 19 crosses into the vehicular way (throughout the entire parking area);
- 20 • The signs designating spaces as "van accessible" are not correct
- 21 (throughout the entire parking area); and,
- 22 • The words "NO PARKING" are not painted within the access aisles
- 23 (throughout the entire parking area");
- 24 • At least one space is marked as accessible by the International Symbol of
- 25 Accessibility (hereafter "ISA") painted in it, but lacks any signage at all
- 26 (throughout the entire parking area);
- 27 • One or more of the paths of travel from the accessible spaces to the
- 28 entrance(s) force a wheelchair occupant to travel behind parked vehicles.

1 These barriers prevented Hubbard from enjoying full and equal access at the  
2 Chula Vista Center Common Area Facility.

3 26. Hubbard was also deterred from visiting the Chula Vista Center  
4 Common Area Facility because she knew that the Chula Vista Center Common  
5 Area Facility's goods, services, facilities, privileges, advantages, and  
6 accommodations were unavailable to physically disabled patrons (such as  
7 herself). She continues to be deterred from visiting the Chula Vista Center  
8 Common Area Facility because of the future threats of injury created by these  
9 barriers.

10 27. To the extent known by Hubbard, the barriers at the Jamba Juice  
11 Facility included, but are not limited to, the following:

- 12 • There is no seating designated as accessible for the disabled (inside or  
13 outside);
- 14 • There is no seating accessible to the disabled (inside or outside);
- 15 • The entrance door requires too much force to operate;
- 16 • There is no ISA indicating that this facility is accessible to the disabled;
- 17 • There is no portion of the counter lowered to accommodate patrons in  
18 wheelchairs;
- 19 • The pipes underneath the lavatory in the restroom are not wrapped to  
20 protect from burns;
- 21 • The trash receptacle is an obstruction to the required strike side clearance  
22 on the restroom door when exiting; and,
- 23 • The mirror is mounted at more than 40 inches from the floor;

24 These barriers prevented Hubbard from enjoying full and equal access at the  
25 Jamba Juice Facility.

26 28. Hubbard was also deterred from visiting the Jamba Juice Facility  
27 because she knew that the Jamba Juice Facility's goods, services, facilities,  
28 privileges, advantages, and accommodations were unavailable to physically



1 disabled patrons (such as herself). She continues to be deterred from visiting the  
2 Jamba Juice Facility because of the future threats of injury created by these  
3 barriers.

4 29. To the extent known by Hubbard, the barriers at the Pizzeria Uno  
5 Facility included, but are not limited to, the following:

- 6 • The baby changing station is an obstruction to the lavatory, the soap  
7 dispenser, and the accessible stall in general;
- 8 • There is no handle mounted below the latch on the interior of the stall  
9 door;
- 10 • The stall door is not self-closing;
- 11 • The side grab bar is not mounted 12 inches from the back wall;
- 12 • The pipes underneath the lavatory are not properly wrapped or not  
13 wrapped at all;
- 14 • The soap dispenser is mounted at more than 40 inches from the floor; and,
- 15 • The paper towel dispenser is mounted at more than 40 inches from the  
16 floor.

17 These barriers prevented Hubbard from enjoying full and equal access in the  
18 Pizzeria Uno Facility.

19 30. Hubbard was also deterred from visiting the Pizzeria Uno Facility  
20 because she knew that the Pizzeria Uno Facility's goods, services, facilities,  
21 privileges, advantages, and accommodations were unavailable to physically  
22 disabled patrons (such as herself). She continues to be deterred from visiting the  
23 Pizzeria Uno Facility because of the future threats of injury created by these  
24 barriers.

25 31. To the extent known by Hubbard, the barriers at the Mervyn's  
26 Facility included, but are not limited to, the following:

- 27 • The entrance lacks an ISA to indicate that the Mervyn's Facility is  
28 accessible;

- 1 • At least one aisle is not 36 inches wide (in fact there are numerous aisles
- 2 throughout the Mervyn's Facility that are less than 36 inches wide);
- 3 • The flush valve is not located on the wide side of the water closet;
- 4 • The stall door is not self-closing;
- 5 • There is no handle mounted below the lock on the interior of the stall
- 6 door;
- 7 • The toilet tissue dispenser protrudes into the clear maneuvering space
- 8 needed to access the water closet;
- 9 • Both the toilet tissue and disposable seat cover dispensers are obstructions
- 10 to the use of the side grab bar;
- 11 • The mirror is mounted at more than 40 inches from the floor;
- 12 • The pipes underneath the lavatory are not wrapped;
- 13 • The paper towel dispenser is mounted at more than 40 inches from the
- 14 floor;
- 15 • There is insufficient strike side clearance on the push side of the restroom
- 16 door; and,
- 17 • The disabled changing room is blocked by merchandise on carts.

18 These barriers prevented Hubbard from enjoying full and equal access.

19 32. Hubbard was also deterred from visiting the Mervyn's Facility  
20 because she knew that the Mervyn's Facility's goods, services, facilities,  
21 privileges, advantages, and accommodations were unavailable to physically  
22 disabled patrons (such as herself). She continues to be deterred from visiting the  
23 Mervyn's Facility because of the future threats of injury created by these  
24 barriers.

25 33. To the extent known by Hubbard, the barriers at the Starbucks  
26 Facility included, but are not limited to, the following:

- 27 • There is no ISA mounted at the entrance to indicate that the Starbucks
- 28 Facility is accessible to the disabled;

- 1 • The entrance door requires too much force to operate;
- 2 • The restroom door requires too much force to operate;
- 3 • There is no seating designated as accessible for the disabled (inside or
- 4 out);
- 5 • There is no accessible seating (inside or out);
- 6 • The toilet tissue dispenser is mounted at more than 19 inches from the
- 7 floor;
- 8 • The disposable seat cover dispenser is mounted at more than 40 inches
- 9 from the floor;
- 10 • The lavatory control requires too much pressure to operate.
- 11 • The pipes underneath the lavatory are not wrapped; and,
- 12 • The soap dispenser control requires too much pressure to operate.

13 These barriers prevented Hubbard from enjoying full and equal access of the  
14 Starbucks Facility.

15 34. Hubbard was also deterred from visiting the Starbucks Facility  
16 because she knew that the Starbucks Facility's goods, services, facilities,  
17 privileges, advantages, and accommodations were unavailable to physically  
18 disabled patrons (such as herself). She continues to be deterred from visiting the  
19 Starbucks Facility because of the future threats of injury created by these  
20 barriers.

21 35. To the extent known by Hubbard, the barriers at the JCPenney  
22 Facility included, but are not limited to, the following:

- 23 • The ISA at the entrance is not correct (wrong color);
- 24 • There is no signage at the women's restroom indicating that it is accessible
- 25 to the disabled;
- 26 • The stall door is not self-closing;
- 27 • There is no handle mounted below the lock on the interior of the stall
- 28 door;

- 1 • The side grab bar is not mounted 12 inches from the back wall;
- 2 • The disposable seat cover dispenser is mounted at more than 40 inches
- 3 from the floor;
- 4 • The toilet tissue dispenser is mounted too far from the back wall;
- 5 • The toilet tissue dispenser protrudes into the clear maneuvering space
- 6 needed to access the water closet;
- 7 • The soap dispenser is mounted out of the required reach range and at more
- 8 than 40 inches from the floor;
- 9 • The trash receptacle is an obstruction to the use of the paper towel
- 10 dispenser;
- 11 • The paper towel dispenser is mounted at more than 40 inches from the
- 12 floor; and,
- 13 • The pipes underneath the lavatory are not properly wrapped.

14 These barriers prevented Hubbard from enjoying full and equal access of the  
15 JCPenney Facility.

16 36. Hubbard was also deterred from visiting the JCPenney Facility  
17 because she knew that the JCPenney Facility's goods, services, facilities,  
18 privileges, advantages, and accommodations were unavailable to physically  
19 disabled patrons (such as herself). She continues to be deterred from visiting the  
20 JCPenney Facility because of the future threats of injury created by these  
21 barriers.

22 37. To the extent known by Hubbard, the barriers at the Subway Facility  
23 included, but are not limited to, the following:

- 24 • There is no ISA at the entrance to indicate that the Subway Facility is
- 25 accessible to the disabled;
- 26 • The entrance door requires too much force to operate;
- 27 • There is no seating designated as accessible for the disabled (inside or
- 28 out);

- 1 • There is no accessible seating (inside or out);
- 2 • The toilet tissue dispenser protrudes into the clear maneuvering space
- 3 needed to access the water closet;
- 4 • The grab bar is too short; and,
- 5 • The pipes underneath the lavatory are not properly wrapped.

6 These barriers prevented Hubbard from enjoying full and equal access at the  
7 Subway Facility.

8 38. Hubbard was also deterred from visiting the Subway Facility  
9 because he knew that the Subway Facility's goods, services, facilities, privileges,  
10 advantages, and accommodations were unavailable to physically disabled  
11 patrons (such as herself). He continues to be deterred from visiting the Subway  
12 Facility because of the future threats of injury created by these barriers.

13 39. To the extent known by Hubbard, the barriers at the Panera Bread  
14 Facility included, but are not limited to, the following:

- 15 • There is no ISA mounted to indicate that the Panera Bread Facility is
- 16 accessible to the disabled;
- 17 • The entrance door requires too much force to operate;
- 18 • The mats on the floor at the entrance are not securely attached;
- 19 • The stall door is not self-closing;
- 20 • There is no handle mounted below the lock on the interior of the stall
- 21 door; and,
- 22 • The pipes underneath the lavatory are not properly wrapped.

23 These barriers prevented Hubbard from enjoying full and equal access at the  
24 Panera Bread Facility.

25 40. Hubbard was also deterred from visiting the Panera Bread Facility  
26 because she knew that the Panera Bread Facility's goods, services, facilities,  
27 privileges, advantages, and accommodations were unavailable to physically  
28

1 disabled patrons (such as herself). She continues to be deterred from visiting the  
2 Subway Facility because of the future threats of injury created by these barriers.

3 41. Hubbard also encountered barriers at the various facilities which  
4 violate state and federal law, but were unrelated to her disability. Nothing within  
5 this Complaint, however, should be construed as an allegation that Hubbard is  
6 seeking to remove barriers unrelated to her disability.

7 42. The Chula Vista Center Defendant knew that these elements and  
8 areas of the Chula Vista Center Common Area Facility were inaccessible, violate  
9 state and federal law, and interfere with (or deny) access to the physically  
10 disabled. Moreover, the Chula Vista Center Defendant has the financial  
11 resources to remove these barriers from the Chula Vista Center Common Area  
12 Facility (without much difficulty or expense), and make the Chula Vista Center  
13 Common Area Facility accessible to the physically disabled. To date, however,  
14 the Chula Vista Center Defendant refuses to either remove those barriers or seek  
15 an unreasonable hardship exemption to excuse non-compliance.

16 43. At all relevant times, the Chula Vista Center Defendant has  
17 possessed and enjoyed sufficient control and authority to modify the Chula Vista  
18 Center Common Area Facility to remove impediments to wheelchair access and  
19 to comply with the Americans with Disabilities Act Accessibility Guidelines and  
20 Title 24 regulations. The Chula Vista Center Defendant has not removed such  
21 impediments and has not modified the Chula Vista Center Common Area  
22 Facility to conform to accessibility standards. The Chula Vista Center Defendant  
23 has intentionally maintained the Chula Vista Center Common Area Facility in its  
24 current condition and has intentionally refrained from altering Chula Vista  
25 Center Common Area Facility so that it complies with the accessibility  
26 standards.

27 44. Hubbard further alleges that the (continued) presence of barriers at  
28 the Chula Vista Center Common Area Facility is so obvious as to establish the

1 Chula Vista Center Defendant's discriminatory intent.<sup>1</sup> On information and  
2 belief, Hubbard avers that evidence of the discriminatory intent includes the  
3 Chula Vista Center Defendant's refusal to adhere to relevant building standards;  
4 disregard for the building plans and permits issued for the Chula Vista Center  
5 Common Area Facility; conscientious decision to the architectural layout (as it  
6 currently exists) at the Chula Vista Center Common Area Facility; decision not  
7 to remove barriers from the Chula Vista Center Common Area Facility; and  
8 allowance that the Chula Vista Center Common Area Facility continues to exist  
9 in its non-compliant state. Hubbard further alleges, on information and belief,  
10 that the Chula Vista Center Defendant is not in the midst of a remodel, and that  
11 the barriers present at the Chula Vista Center Common Area Facility are not  
12 isolated (or temporary) interruptions in access due to maintenance or repairs.<sup>2</sup>

13 45. The Jamba Juice Defendants knew that these elements and areas of  
14 the Jamba Juice Facility were inaccessible, violate state and federal law, and  
15 interfere with (or deny) access to the physically disabled. Moreover, the Jamba  
16 Juice Defendants have the financial resources to remove these barriers from the  
17 Jamba Juice Facility (without much difficulty or expense), and make the Jamba  
18 Juice Facility accessible to the physically disabled. To date, however, the Jamba  
19 Juice Defendants refuse to either remove those barriers or seek an unreasonable  
20 hardship exemption to excuse non-compliance.

21 46. At all relevant times, the Jamba Juice Defendants have possessed  
22 and enjoyed sufficient control and authority to modify the Jamba Juice Facility to  
23 remove impediments to wheelchair access and to comply with the Americans  
24 with Disabilities Act Accessibility Guidelines and Title 24 regulations. The  
25 Jamba Juice Defendants have not removed such impediments and have not  
26 modified the Jamba Juice Facility to conform to accessibility standards. The

27  
28 <sup>1</sup> E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

<sup>2</sup> Id.; 28 C.F.R. § 36.211(b)

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1 Jamba Juice Defendants have intentionally maintained the Jamba Juice Facility  
2 in its current condition and have intentionally refrained from altering the Jamba  
3 Juice Facility so that it complies with the accessibility standards.

4 47. Hubbard further alleges that the (continued) presence of barriers at  
5 the Jamba Juice Facility is so obvious as to establish the Jamba Juice  
6 Defendants' discriminatory intent.<sup>3</sup> On information and belief, Hubbard avers  
7 that evidence of the discriminatory intent includes the Jamba Juice Defendants'  
8 refusal to adhere to relevant building standards; disregard for the building plans  
9 and permits issued for the Jamba Juice Facility; conscientious decision to the  
10 architectural layout (as it currently exists) at the Jamba Juice Facility; decision  
11 not to remove barriers from the Jamba Juice Facility; and allowance that the  
12 Jamba Juice Facility continues to exist in its non-compliant state. Hubbard  
13 further alleges, on information and belief, that the Jamba Juice Defendants are  
14 not in the midst of a remodel, and that the barriers present at the Jamba Juice  
15 Facility are not isolated (or temporary) interruptions in access due to  
16 maintenance or repairs.<sup>4</sup>

17 48. The Pizzeria Uno Defendants knew that these elements and areas of  
18 the Pizzeria Uno Facility were inaccessible, violate state and federal law, and  
19 interfere with (or deny) access to the physically disabled. Moreover, the Pizzeria  
20 Uno Defendants have the financial resources to remove these barriers from the  
21 Pizzeria Uno Facility (without much difficulty or expense), and make the  
22 Pizzeria Uno Facility accessible to the physically disabled. To date, however,  
23 the Pizzeria Uno Defendants refuse to either remove those barriers or seek an  
24 unreasonable hardship exemption to excuse non-compliance.

25 49. At all relevant times, the Pizzeria Uno Defendants have possessed  
26 and enjoyed sufficient control and authority to modify the Pizzeria Uno Facility  
27

28 <sup>3</sup> E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

<sup>4</sup> Id.; 28 C.F.R. § 36.211(b)

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1 to remove impediments to wheelchair access and to comply with the Americans  
2 with Disabilities Act Accessibility Guidelines and Title 24 regulations. The  
3 Pizzeria Uno Defendants have not removed such impediments and have not  
4 modified the Pizzeria Uno Facility to conform to accessibility standards. The  
5 Pizzeria Uno Defendants have intentionally maintained the Pizzeria Uno Facility  
6 in its current condition and have intentionally refrained from altering the Pizzeria  
7 Uno Facility so that it complies with the accessibility standards.

8 50. Hubbard further alleges that the (continued) presence of barriers at  
9 the Pizzeria Uno Facility is so obvious as to establish the Pizzeria Uno  
10 Defendants' discriminatory intent.<sup>5</sup> On information and belief, Hubbard avers  
11 that evidence of the discriminatory intent includes the Pizzeria Uno Defendants'  
12 refusal to adhere to relevant building standards; disregard for the building plans  
13 and permits issued for the Pizzeria Uno Facility; conscientious decision to the  
14 architectural layout (as it currently exists) at the Pizzeria Uno Facility; decision  
15 not to remove barriers from the Pizzeria Uno Facility; and allowance that the  
16 Pizzeria Uno Facility continues to exist in its non-compliant state. Hubbard  
17 further alleges, on information and belief, that the Pizzeria Uno Defendants are  
18 not in the midst of a remodel, and that the barriers present at the Pizzeria Uno  
19 Facility are not isolated (or temporary) interruptions in access due to  
20 maintenance or repairs.<sup>6</sup>

21 51. The Mervyn's Defendants knew that these elements and areas of the  
22 Mervyn's Facility were inaccessible, violate state and federal law, and interfere  
23 with (or deny) access to the physically disabled. Moreover, the Mervyn's  
24 Defendants have the financial resources to remove these barriers from the  
25 Mervyn's Facility (without much difficulty or expense), and make the facility  
26 accessible to the physically disabled. To date, however, the Mervyn's  
27

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28 <sup>5</sup> E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

<sup>6</sup> Id.; 28 C.F.R. § 36.211(b)

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1 Defendants refuse to either remove those barriers or seek an unreasonable  
2 hardship exemption to excuse non-compliance.

3 52. At all relevant times, the Mervyn's Defendants have possessed and  
4 enjoyed sufficient control and authority to modify the Mervyn's Facility to  
5 remove impediments to wheelchair access and to comply with the Americans  
6 with Disabilities Act Accessibility Guidelines and Title 24 regulations. The  
7 Mervyn's Defendants have not removed such impediments and have not  
8 modified the Mervyn's Facility to conform to accessibility standards. The  
9 Mervyn's Defendants have intentionally maintained the Mervyn's Facility in its  
10 current condition and have intentionally refrained from altering the Mervyn's  
11 Facility so that it complies with the accessibility standards.

12 53. Hubbard further alleges that the (continued) presence of barriers at  
13 the Mervyn's Facility is so obvious as to establish the Mervyn's Defendants'  
14 discriminatory intent.<sup>7</sup> On information and belief, Hubbard avers that evidence  
15 of the discriminatory intent includes the Mervyn's Defendants' refusal to adhere  
16 to relevant building standards; disregard for the building plans and permits  
17 issued for the Mervyn's Facility; conscientious decision to the architectural  
18 layout (as it currently exists) at the Mervyn's Facility; decision not to remove  
19 barriers from the Mervyn's Facility; and allowance that the Mervyn's Facility  
20 continues to exist in its non-compliant state. Hubbard further alleges, on  
21 information and belief, that the Mervyn's Defendants are not in the midst of a  
22 remodel, and that the barriers present at the Mervyn's Facility are not isolated (or  
23 temporary) interruptions in access due to maintenance or repairs.<sup>8</sup>

24 54. The Starbucks Defendants knew that these elements and areas of the  
25 Starbucks Facility were inaccessible, violate state and federal law, and interfere  
26 with (or deny) access to the physically disabled. Moreover, the Starbucks  
27

28 <sup>7</sup> E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

<sup>8</sup> Id.; 28 C.F.R. § 36.211(b)

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1 Defendants have the financial resources to remove these barriers from the  
2 Starbucks Facility (without much difficulty or expense), and make the Starbucks  
3 Facility accessible to the physically disabled. To date, however, the Starbucks  
4 Defendants refuse to either remove those barriers or seek an unreasonable  
5 hardship exemption to excuse non-compliance.

6 55. At all relevant times, the Starbucks Defendants have possessed and  
7 enjoyed sufficient control and authority to modify the Starbucks Facility to  
8 remove impediments to wheelchair access and to comply with the Americans  
9 with Disabilities Act Accessibility Guidelines and Title 24 regulations. The  
10 Starbucks Defendants have not removed such impediments and have not  
11 modified the Starbucks Facility to conform to accessibility standards. The  
12 Starbucks Defendants have intentionally maintained the Starbucks Facility in its  
13 current condition and have intentionally refrained from altering the Starbucks  
14 Facility so that it complies with the accessibility standards.

15 56. Hubbard further alleges that the (continued) presence of barriers at  
16 the facility is so obvious as to establish the Starbucks Defendants' discriminatory  
17 intent.<sup>9</sup> On information and belief, Hubbard avers that evidence of the  
18 discriminatory intent includes the Starbucks Defendants' refusal to adhere to  
19 relevant building standards; disregard for the building plans and permits issued  
20 for the Starbucks Facility; conscientious decision to the architectural layout (as it  
21 currently exists) at the Starbucks Facility; decision not to remove barriers from  
22 the Starbucks Facility; and allowance that the Starbucks Facility continues to  
23 exist in its non-compliant state. Hubbard further alleges, on information and  
24 belief, that the Starbucks Defendants are not in the midst of a remodel, and that  
25 the barriers present at the Starbucks Facility are not isolated (or temporary)  
26 interruptions in access due to maintenance or repairs.<sup>10</sup>

27  
28 <sup>9</sup> E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

<sup>10</sup> Id.; 28 C.F.R. § 36.211(b)

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1           57. The JCPenney Defendants knew that these elements and areas of the  
2 JCPenney Facility were inaccessible, violate state and federal law, and interfere  
3 with (or deny) access to the physically disabled. Moreover, the JCPenney  
4 Defendants have the financial resources to remove these barriers from the  
5 JCPenney Facility (without much difficulty or expense), and make the JCPenney  
6 Facility accessible to the physically disabled. To date, however, the JCPenney  
7 Defendants refuse to either remove those barriers or seek an unreasonable  
8 hardship exemption to excuse non-compliance.

9           58. At all relevant times, the JCPenney Defendants have possessed and  
10 enjoyed sufficient control and authority to modify the JCPenney Facility to  
11 remove impediments to wheelchair access and to comply with the Americans  
12 with Disabilities Act Accessibility Guidelines and Title 24 regulations. The  
13 JCPenney Defendants have not removed such impediments and have not  
14 modified the JCPenney Facility to conform to accessibility standards. The  
15 JCPenney Defendants have intentionally maintained the JCPenney Facility in its  
16 current condition and have intentionally refrained from altering the JCPenney  
17 Facility so that it complies with the accessibility standards.

18           59. Hubbard further alleges that the (continued) presence of barriers at  
19 the facility is so obvious as to establish the JCPenney Defendants' discriminatory  
20 intent.<sup>11</sup> On information and belief, Hubbard avers that evidence of the  
21 discriminatory intent includes the JCPenney Defendants' refusal to adhere to  
22 relevant building standards; disregard for the building plans and permits issued  
23 for the JCPenney Facility; conscientious decision to the architectural layout (as it  
24 currently exists) at the JCPenney Facility; decision not to remove barriers from  
25 the JCPenney Facility; and allowance that the JCPenney Facility continues to  
26 exist in its non-compliant state. Hubbard further alleges, on information and  
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<sup>11</sup> E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6  
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1 belief, that the JCPenney Defendants are not in the midst of a remodel, and that  
2 the barriers present at the JCPenney Facility are not isolated (or temporary)  
3 interruptions in access due to maintenance or repairs.<sup>12</sup>

4 60. The Subway Defendants knew that these elements and areas of the  
5 Subway Facility were inaccessible, violate state and federal law, and interfere  
6 with (or deny) access to the physically disabled. Moreover, the Subway  
7 Defendants have the financial resources to remove these barriers from the  
8 Subway Facility (without much difficulty or expense), and make the Subway  
9 Facility accessible to the physically disabled. To date, however, the Subway  
10 Defendants refuse to either remove those barriers or seek an unreasonable  
11 hardship exemption to excuse non-compliance.

12 61. At all relevant times, the Subway Defendants have possessed and  
13 enjoyed sufficient control and authority to modify the Subway Facility to remove  
14 impediments to wheelchair access and to comply with the Americans with  
15 Disabilities Act Accessibility Guidelines and Title 24 regulations. The Subway  
16 Defendants have not removed such impediments and have not modified the  
17 Subway Facility to conform to accessibility standards. The Subway Defendants  
18 have intentionally maintained the Subway Facility in its current condition and  
19 have intentionally refrained from altering the Subway Facility property so that it  
20 complies with the accessibility standards.

21 62. Hubbard further alleges that the (continued) presence of barriers at  
22 the Subway Facility is so obvious as to establish the Subway Defendants'  
23 discriminatory intent.<sup>13</sup> On information and belief, Hubbard avers that evidence  
24 of the discriminatory intent includes the Subway Defendants' refusal to adhere to  
25 relevant building standards; disregard for the building plans and permits issued  
26 for the Subway Facility; conscientious decision to the architectural layout (as it  
27

28 <sup>12</sup> Id.; 28 C.F.R. § 36.211(b)

<sup>13</sup> E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6  
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1 currently exists) at the Subway Facility; decision not to remove barriers the  
2 Subway Facility; and allowance that the Subway Facility continues to exist in its  
3 non-compliant state. Hubbard further alleges, on information and belief, that the  
4 Subway Defendants are not in the midst of a remodel, and that the barriers  
5 present at the Subway Facility are not isolated (or temporary) interruptions in  
6 access due to maintenance or repairs.<sup>14</sup>

7         63. The Panera Bread Defendants knew that these elements and areas of  
8 the Panera Bread Facility were inaccessible, violate state and federal law, and  
9 interfere with (or deny) access to the physically disabled. Moreover, the Panera  
10 Bread Defendants have the financial resources to remove these barriers from the  
11 Panera Bread Facility (without much difficulty or expense), and make the Panera  
12 Bread Facility accessible to the physically disabled. To date, however, the  
13 Panera Bread Defendants refuse to either remove those barriers or seek an  
14 unreasonable hardship exemption to excuse non-compliance.

15         64. At all relevant times, the Panera Bread Defendants have possessed  
16 and enjoyed sufficient control and authority to modify the Subway Facility to  
17 remove impediments to wheelchair access and to comply with the Americans  
18 with Disabilities Act Accessibility Guidelines and Title 24 regulations. The  
19 Panera Bread Defendants have not removed such impediments and have not  
20 modified the Panera Bread Facility to conform to accessibility standards. The  
21 Panera Bread Defendants have intentionally maintained the Panera Bread  
22 Facility in its current condition and have intentionally refrained from altering the  
23 Panera Bread Facility property so that it complies with the accessibility  
24 standards.

25         65. Hubbard further alleges that the (continued) presence of barriers at  
26 the Panera Bread Facility is so obvious as to establish the Panera Bread  
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28  

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<sup>14</sup> Id.; 28 C.F.R. § 36.211(b)  
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Defendants' discriminatory intent.<sup>15</sup> On information and belief, Hubbard avers that evidence of the discriminatory intent includes the Panera Bread Defendants' refusal to adhere to relevant building standards; disregard for the building plans and permits issued for the Panera Bread Facility; conscientious decision to the architectural layout (as it currently exists) at the Panera Bread Facility; decision not to remove barriers the Panera Bread Facility; and allowance that the Panera Bread Facility continues to exist in its non-compliant state. Hubbard further alleges, on information and belief, that the Panera Bread Defendants are not in the midst of a remodel, and that the barriers present at the Panera Bread Facility are not isolated (or temporary) interruptions in access due to maintenance or repairs.<sup>16</sup>

## VI. FIRST CLAIM

### **Americans with Disabilities Act of 1990**

#### Denial of "Full and Equal" Enjoyment and Use

#### (The Chula Vista Center Common Area Facility)

66. Hubbard incorporates the allegations contained in paragraphs 1 through 65 for her claim.

67. Title III of the ADA holds as a "general rule" that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

68. The Chula Vista Center Defendant discriminated against Hubbard by denying "full and equal enjoyment" and use of the goods, services, facilities, privileges or accommodations of the Chula Vista Center Common Area Facility during each visit and each incident of deterrence.

<sup>15</sup> E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

<sup>16</sup> Id.; 28 C.F.R. § 36.211(b)

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1           Failure to Remove Architectural Barriers in an Existing Facility

2           69. The ADA specifically prohibits failing to remove architectural  
3 barriers, which are structural in nature, in existing facilities where such removal  
4 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily  
5 achievable” is defined as “easily accomplishable and able to be carried out  
6 without much difficulty or expense.” *Id.* § 12181(9).

7           70. When an entity can demonstrate that removal of a barrier is not  
8 readily achievable, a failure to make goods, services, facilities, or  
9 accommodations available through alternative methods is also specifically  
10 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

11           71. Here, Hubbard alleges that the Chula Vista Center Defendant can  
12 easily remove the architectural barriers at the Chula Vista Center Common Area  
13 Facility without much difficulty or expense, and that the Chula Vista Center  
14 Defendant violated the ADA by failing to remove those barriers, when it was  
15 readily achievable to do so.

16           72. In the alternative, if it was not “readily achievable” for the Chula  
17 Vista Center Defendant to remove the Chula Vista Center Common Area  
18 Facility’s barriers, then the Chula Vista Center Defendant violated the ADA by  
19 failing to make the required services available through alternative methods,  
20 which are readily achievable.

21           Failure to Design and Construct an Accessible Facility

22           73. On information and belief, the Chula Vista Center Common Area  
23 Facility was designed or constructed (or both) after January 26, 1992—  
24 independently triggering access requirements under Title III of the ADA.

25           74. The ADA also prohibits designing and constructing facilities for  
26 first occupancy after January 26, 1993, that aren’t readily accessible to, and  
27 usable by, individuals with disabilities when it was structurally practicable to do  
28 so. 42 U.S.C. § 12183(a)(1).



1        75. Here, the Chula Vista Center Defendant violated the ADA by  
2 designing or constructing (or both) the Chula Vista Center Common Area  
3 Facility in a manner that was not readily accessible to the physically disabled  
4 public—including Hubbard—when it was structurally practical to do so.<sup>17</sup>

5                    Failure to Make an Altered Facility Accessible

6        76. On information and belief, the Chula Vista Center Common Area  
7 Facility was modified after January 26, 1992, independently triggering access  
8 requirements under the ADA.

9        77. The ADA also requires that facilities altered in a manner that affects  
10 (or could affect) its usability must be made readily accessible to individuals with  
11 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering  
12 an area that contains a facility's primary function also requires adding making  
13 the paths of travel, bathrooms, telephones, and drinking fountains serving that  
14 area accessible to the maximum extent feasible. *Id.*

15        78. Here, the Chula Vista Center Defendant altered the Chula Vista  
16 Center Common Area Facility in a manner that violated the ADA and was not  
17 readily accessible to the physically disabled public—including Hubbard—to the  
18 maximum extent feasible.

19                    Failure to Modify Existing Policies and Procedures

20        79. The ADA also requires reasonable modifications in policies,  
21 practices, or procedures, when necessary to afford such goods, services,  
22 facilities, or accommodations to individuals with disabilities, unless the entity  
23 can demonstrate that making such modifications would fundamentally alter their  
24 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

25        80. Here, the Chula Vista Center Defendant violated the ADA by failing  
26 to make reasonable modifications in policies, practices, or procedures at the  
27

28        <sup>17</sup> Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

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1 Chula Vista Center Common Area Facility, when these modifications were  
2 necessary to afford (and would not fundamentally alter the nature of) these  
3 goods, services, facilities, or accommodations.

4 81. Hubbard seeks all relief available under the ADA (*i.e.*, injunctive  
5 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42  
6 U.S.C. § 12205.

7 82. Hubbard also seeks a finding from this Court (*i.e.*, declaratory  
8 relief) that the Chula Vista Center Defendant violated the ADA in order to  
9 pursue damages under California's Unruh Civil Rights Act or Disabled Persons  
10 Act.

## 11 VII. SECOND CLAIM

### 12 Disabled Persons Act

13 (The Chula Vista Center Common Area Facility)

14 83. Hubbard incorporates the allegations contained in paragraphs 1  
15 through 82 for her claim.

16 84. California Civil Code § 54 states, in part, that: Individuals with  
17 disabilities have the same right as the general public to the full and free use of  
18 the streets, sidewalks, walkways, public buildings and facilities, and other public  
19 places.

20 85. California Civil Code § 54.1 also states, in part, that: Individuals  
21 with disabilities shall be entitled to full and equal access to accommodations,  
22 facilities, telephone facilities, places of public accommodation, and other places  
23 to which the general public is invited.

24 86. Both sections specifically incorporate (by reference) an individual's  
25 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

26 87. Here, the Chula Vista Center Defendant discriminated against the  
27 physically disabled public—including Hubbard—by denying them full and equal  
28 access to the Chula Vista Center Common Area Facility. The Chula Vista

1 Center Defendant also violated Hubbard's rights under the ADA, and, therefore,  
2 infringed upon or violated (or both) Hubbard's rights under the Disabled Persons  
3 Act.

4 88. For each offense of the Disabled Persons Act, Hubbard seeks actual  
5 damages (both general and special damages), statutory minimum damages of one  
6 thousand dollars (\$1,000), declaratory relief, and any other remedy available  
7 under California Civil Code § 54.3.

8 89. He also seeks to enjoin the Chula Vista Center Defendant from  
9 violating the Disabled Persons Act (and ADA) under California Civil Code § 55,  
10 and to recover reasonable attorneys' fees and incurred under California Civil  
11 Code §§ 54.3 and 55.

#### 12 VIII. THIRD CLAIM

#### 13 **Unruh Civil Rights Act**

14 (The Chula Vista Center Common Area Facility)

15 90. Hubbard incorporates the allegations contained in paragraphs 1  
16 through 89 for her claim.

17 91. California Civil Code § 51 states, in part, that: All persons within  
18 the jurisdiction of this state are entitled to the full and equal accommodations,  
19 advantages, facilities, privileges, or services in all business establishments of  
20 every kind whatsoever.

21 92. California Civil Code § 51.5 also states, in part, that: No business  
22 establishment of any kind whatsoever shall discriminate against any person in  
23 this state because of the disability of the person.

24 93. California Civil Code § 51(f) specifically incorporates (by  
25 reference) an individual's rights under the ADA into the Unruh Act.

26 94. The Chula Vista Center Defendant's aforementioned acts and  
27 omissions denied the physically disabled public—including Hubbard—full and  
28

1 equal accommodations, advantages, facilities, privileges and services in a  
2 business establishment (because of their physical disability).

3 95. These acts and omissions (including the ones that violate the ADA)  
4 denied, aided or incited a denial, or discriminated against Hubbard by violating  
5 the Unruh Act.

6 96. Hubbard was damaged by the Chula Vista Center Defendant's  
7 wrongful conduct, and seeks statutory minimum damages of four thousand  
8 dollars (\$4,000) for each offense.

9 97. Hubbard also seeks to enjoin the Chula Vista Center Defendant  
10 from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees  
11 and costs incurred under California Civil Code § 52(a).

## 12 IX. FOURTH CLAIM

### 13 Denial of Full and Equal Access to Public Facilities

#### 14 (The Chula Vista Center Common Area Facility)

15 98. Hubbard incorporates the allegations contained in paragraphs 1  
16 through 97 for this claim.

17 99. Health and Safety Code § 19955(a) states, in part, that: California  
18 public accommodations or facilities (built with private funds) shall adhere to the  
19 provisions of Government Code § 4450.

20 100. Health and Safety Code § 19959 states, in part, that: Every existing  
21 (non-exempt) public accommodation constructed prior to July 1, 1970, which is  
22 altered or structurally repaired, is required to comply with this chapter.

23 101. Hubbard alleges the Chula Vista Center Common Area Facility is a  
24 public accommodation constructed, altered, or repaired in a manner that violates  
25 Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both),  
26 and that the Chula Vista Center Common Area Facility was not exempt under  
27 Health and Safety Code § 19956.

102. The Chula Vista Center Defendant's non-compliance with these requirements at the Chula Vista Center Common Area Facility aggrieved (or potentially aggrieved) Hubbard and other persons with physical disabilities. Accordingly, she seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

## X. FIFTH CLAIM

### **Americans with Disabilities Act of 1990**

#### Denial of "Full and Equal" Enjoyment and Use

#### (The Jamba Juice Facility)

103. Hubbard incorporates the allegations contained in paragraphs 1 through 102 for this claim.

104. Title III of the ADA holds as a "general rule" that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

105. The Jamba Juice Defendants' discriminated against Hubbard by denying "full and equal enjoyment" and use of the goods, services, facilities, privileges or accommodations of the Jamba Juice Facility during each visit and each incident of deterrence.

#### Failure to Remove Architectural Barriers in an Existing Facility

106. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term "readily achievable" is defined as "easily accomplishable and able to be carried out without much difficulty or expense." *Id.* § 12181(9).

107. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or

1 accommodations available through alternative methods is also specifically  
2 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

3 108. Here, Hubbard alleges that the Jamba Juice Defendants can easily  
4 remove the architectural barriers at the Jamba Juice Facility without much  
5 difficulty or expense, and that the Jamba Juice Defendants violated the ADA by  
6 failing to remove those barriers, when it was readily achievable to do so.

7 109. In the alternative, if it was not “readily achievable” for the Jamba  
8 Juice Defendants to remove the Jamba Juice Facility’s barriers, then the Jamba  
9 Juice Defendants violated the ADA by failing to make the required services  
10 available through alternative methods, which are readily achievable.

11 Failure to Design and Construct an Accessible Facility

12 110. On information and belief, the Jamba Juice Facility was designed or  
13 constructed (or both) after January 26, 1992—independently triggering access  
14 requirements under Title III of the ADA.

15 111. The ADA also prohibits designing and constructing facilities for  
16 first occupancy after January 26, 1993, that aren’t readily accessible to, and  
17 usable by, individuals with disabilities when it was structurally practicable to do  
18 so. 42 U.S.C. § 12183(a)(1).

19 112. Here, the Jamba Juice Defendants violated the ADA by designing or  
20 constructing (or both) the Jamba Juice Facility in a manner that was not readily  
21 accessible to the physically disabled public—including Hubbard—when it was  
22 structurally practical to do so.<sup>18</sup>

23 Failure to Make an Altered Facility Accessible

24 113. On information and belief, the Jamba Juice Facility was modified  
25 after January 26, 1992, independently triggering access requirements under the  
26 ADA.

27  
28 <sup>18</sup> Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

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1           114. The ADA also requires that facilities altered in a manner that affects  
2 (or could affect) its usability must be made readily accessible to individuals with  
3 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering  
4 an area that contains a facility's primary function also requires adding making  
5 the paths of travel, bathrooms, telephones, and drinking fountains serving that  
6 area accessible to the maximum extent feasible. Id.

7           115. Here, the Jamba Juice Defendants altered the Jamba Juice Facility in  
8 a manner that violated the ADA and was not readily accessible to the physically  
9 disabled public—including Hubbard—to the maximum extent feasible.

10                   Failure to Modify Existing Policies and Procedures

11           116. The ADA also requires reasonable modifications in policies,  
12 practices, or procedures, when necessary to afford such goods, services,  
13 facilities, or accommodations to individuals with disabilities, unless the entity  
14 can demonstrate that making such modifications would fundamentally alter their  
15 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

16           117. Here, the Jamba Juice Defendants violated the ADA by failing to  
17 make reasonable modifications in policies, practices, or procedures at the Jamba  
18 Juice Facility, when these modifications were necessary to afford (and would not  
19 fundamentally alter the nature of) these goods, services, facilities, or  
20 accommodations.

21           118. Hubbard seeks all relief available under the ADA (*i.e.*, injunctive  
22 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42  
23 U.S.C. § 12205.

24           119. Hubbard also seeks a finding from this Court (*i.e.*, declaratory  
25 relief) that Applebee's violated the ADA in order to pursue damages under  
26 California's Unruh Civil Rights Act or Disabled Persons Act.



## 1 XI. SIXTH CLAIM

2 **Disabled Persons Act**

3 (The Jamba Juice Facility)

4 120. Hubbard incorporates the allegations contained in paragraphs 1  
5 through 119 for this claim.6 121. California Civil Code § 54 states, in part, that: Individuals with  
7 disabilities have the same right as the general public to the full and free use of  
8 the streets, sidewalks, walkways, public buildings and facilities, and other public  
9 places.10 122. California Civil Code § 54.1 also states, in part, that: Individuals  
11 with disabilities shall be entitled to full and equal access to accommodations,  
12 facilities, telephone facilities, places of public accommodation, and other places  
13 to which the general public is invited.14 123. Both sections specifically incorporate (by reference) an individual's  
15 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).16 124. Here, the Jamba Juice Defendants discriminated against the  
17 physically disabled public—including Hubbard—by denying them full and equal  
18 access to the Jamba Juice Facility. The Jamba Juice Defendants also violated  
19 Hubbard's rights under the ADA, and, therefore, infringed upon or violated (or  
20 both) Hubbard's rights under the Disabled Persons Act.21 125. For each offense of the Disabled Persons Act, Hubbard seeks actual  
22 damages (both general and special damages), statutory minimum damages of one  
23 thousand dollars (\$1,000), declaratory relief, and any other remedy available  
24 under California Civil Code § 54.3.25 126. He also seeks to enjoin the Jamba Juice Defendants from violating  
26 the Disabled Persons Act (and ADA) under California Civil Code § 55, and to  
27 recover reasonable attorneys' fees and incurred under California Civil Code §§  
28 54.3 and 55.



XII. SEVENTH CLAIM

**Unruh Civil Rights Act**

(The Jamba Juice Facility)

127. Hubbard incorporates the allegations contained in paragraphs 1 through 126 for this claim.

128. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

129. California Civil Code § 51.5 also states, in part, that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

130. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

131. The Jamba Juice Defendants' aforementioned acts and omissions denied the physically disabled public—including Hubbard—full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

132. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Hubbard by violating the Unruh Act.

133. Hubbard was damaged by the Jamba Juice Defendants' wrongful conduct, and seeks statutory minimum damages of four thousand dollars (\$4,000) for each offense.

134. Hubbard also seeks to enjoin the Jamba Juice Defendants from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

XIII. EIGHTH CLAIM

**Denial of Full and Equal Access to Public Facilities**

(The Jamba Juice Facility)

135. Hubbard incorporates the allegations contained in paragraphs 1 through 134 for this claim.

136. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

137. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

138. Hubbard alleges the Jamba Juice Facility is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Jamba Juice Facility was not exempt under Health and Safety Code § 19956.

139. The Jamba Juice Defendants' non-compliance with these requirements at the Jamba Juice Facility aggrieved (or potentially aggrieved) Hubbard and other persons with physical disabilities. Accordingly, he seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

XIV. NINTH CLAIM

**Americans with Disabilities Act of 1990**

Denial of "Full and Equal" Enjoyment and Use

(The Pizzeria Uno Facility)

140. Hubbard incorporates the allegations contained in paragraphs 1 through 139 for this claim.

141. Title III of the ADA holds as a "general rule" that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations

1 offered by any person who owns, operates, or leases a place of public  
2 accommodation. 42 U.S.C. § 12182(a).

3 142. The Pizzeria Uno Defendants discriminated against Hubbard by  
4 denying “full and equal enjoyment” and use of the goods, services, facilities,  
5 privileges or accommodations of the Pizzeria Uno Facility during each visit and  
6 each incident of deterrence.

7 Failure to Remove Architectural Barriers in an Existing Facility

8 143. The ADA specifically prohibits failing to remove architectural  
9 barriers, which are structural in nature, in existing facilities where such removal  
10 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily  
11 achievable” is defined as “easily accomplishable and able to be carried out  
12 without much difficulty or expense.” *Id.* § 12181(9).

13 144. When an entity can demonstrate that removal of a barrier is not  
14 readily achievable, a failure to make goods, services, facilities, or  
15 accommodations available through alternative methods is also specifically  
16 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

17 145. Here, Hubbard alleges that the Pizzeria Uno Defendants can easily  
18 remove the architectural barriers at the Pizzeria Uno Facility without much  
19 difficulty or expense, and that the Pizzeria Uno Defendants violated the ADA by  
20 failing to remove those barriers, when it was readily achievable to do so.

21 146. In the alternative, if it was not “readily achievable” for the Pizzeria  
22 Uno Defendants to remove the Pizzeria Uno Facility’s barriers, then the Pizzeria  
23 Uno Defendants violated the ADA by failing to make the required services  
24 available through alternative methods, which are readily achievable.

25 Failure to Design and Construct an Accessible Facility

26 147. On information and belief, the Pizzeria Uno Facility was designed  
27 or constructed (or both) after January 26, 1992—independently triggering access  
28 requirements under Title III of the ADA.

1        148. The ADA also prohibits designing and constructing facilities for  
 2 first occupancy after January 26, 1993, that aren't readily accessible to, and  
 3 usable by, individuals with disabilities when it was structurally practicable to do  
 4 so. 42 U.S.C. § 12183(a)(1).

5        149. Here, the Pizzeria Uno Defendants violated the ADA by designing  
 6 or constructing (or both) the Pizzeria Uno Facility in a manner that was not  
 7 readily accessible to the physically disabled public—including Hubbard—when  
 8 it was structurally practical to do so.<sup>19</sup>

9                    Failure to Make an Altered Facility Accessible

10        150. On information and belief, the Pizzeria Uno Facility was modified  
 11 after January 26, 1992, independently triggering access requirements under the  
 12 ADA.

13        151. The ADA also requires that facilities altered in a manner that affects  
 14 (or could affect) its usability must be made readily accessible to individuals with  
 15 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering  
 16 an area that contains a facility's primary function also requires adding making  
 17 the paths of travel, bathrooms, telephones, and drinking fountains serving that  
 18 area accessible to the maximum extent feasible. Id.

19        152. Here, the Pizzeria Uno Defendants altered the Pizzeria Uno Facility  
 20 in a manner that violated the ADA and was not readily accessible to the  
 21 physically disabled public—including Hubbard—to the maximum extent  
 22 feasible.

23                    Failure to Modify Existing Policies and Procedures

24        153. The ADA also requires reasonable modifications in policies,  
 25 practices, or procedures, when necessary to afford such goods, services,  
 26 facilities, or accommodations to individuals with disabilities, unless the entity  
 27

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28        <sup>19</sup> Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

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Plaintiff's Complaint

1 can demonstrate that making such modifications would fundamentally alter their  
2 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

3 154. Here, the Pizzeria Uno Defendants violated the ADA by failing to  
4 make reasonable modifications in policies, practices, or procedures at the  
5 Pizzeria Uno Facility, when these modifications were necessary to afford (and  
6 would not fundamentally alter the nature of) these goods, services, facilities, or  
7 accommodations.

8 155. Hubbard seeks all relief available under the ADA (*i.e.*, injunctive  
9 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42  
10 U.S.C. § 12205.

11 156. Hubbard also seeks a finding from this Court (*i.e.*, declaratory  
12 relief) that the Pizzeria Uno Defendants violated the ADA in order to pursue  
13 damages under California's Unruh Civil Rights Act or Disabled Persons Act.

14 **XV. TENTH CLAIM**

15 **Disabled Persons Act**

16 (The Pizzeria Uno Facility)

17 157. Hubbard incorporates the allegations contained in paragraphs 1  
18 through 156 for this claim.

19 158. California Civil Code § 54 states, in part, that: Individuals with  
20 disabilities have the same right as the general public to the full and free use of  
21 the streets, sidewalks, walkways, public buildings and facilities, and other public  
22 places.

23 159. California Civil Code § 54.1 also states, in part, that: Individuals  
24 with disabilities shall be entitled to full and equal access to accommodations,  
25 facilities, telephone facilities, places of public accommodation, and other places  
26 to which the general public is invited.

27 160. Both sections specifically incorporate (by reference) an individual's  
28 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

161. Here, the Pizzeria Uno Defendants discriminated against the physically disabled public—including Hubbard—by denying them full and equal access to the Pizzeria Uno Facility. The Pizzeria Uno Defendants also violated Hubbard’s rights under the ADA, and, therefore, infringed upon or violated (or both) Hubbard’s rights under the Disabled Persons Act.

162. For each offense of the Disabled Persons Act, Hubbard seeks actual damages (both general and special damages), statutory minimum damages of one thousand dollars (\$1,000), declaratory relief, and any other remedy available under California Civil Code § 54.3.

163. She also seeks to enjoin the Pizzeria Uno Defendants from violating the Disabled Persons Act (and ADA) under California Civil Code § 55, and to recover reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and 55.

## XVI. ELEVENTH CLAIM

## Unruh Civil Rights Act

(The Pizzeria Uno Facility)

164. Hubbard incorporates the allegations contained in paragraphs 1 through 163 for this claim.

165. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

166. California Civil Code § 51.5 also states, in part, that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

167. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

1           168. The Pizzeria Uno Defendants' aforementioned acts and omissions  
2 denied the physically disabled public—including Hubbard—full and equal  
3 accommodations, advantages, facilities, privileges and services in a business  
4 establishment (because of their physical disability).

5           169. These acts and omissions (including the ones that violate the ADA)  
6 denied, aided or incited a denial, or discriminated against Hubbard by violating  
7 the Unruh Act.

8           170. Hubbard was damaged by the Pizzeria Uno Defendants' wrongful  
9 conduct, and seeks statutory minimum damages of four thousand dollars  
10 (\$4,000) for each offense.

11           171. Hubbard also seeks to enjoin the Pizzeria Uno Defendants from  
12 violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and  
13 costs incurred under California Civil Code § 52(a).

#### 14                                   XVII. TWELFTH CLAIM

##### 15                           **Denial of Full and Equal Access to Public Facilities**

##### 16                                   (The Pizzeria Uno Facility)

17           172. Hubbard incorporates the allegations contained in paragraphs 1  
18 through 171 for this claim.

19           173. Health and Safety Code § 19955(a) states, in part, that: California  
20 public accommodations or facilities (built with private funds) shall adhere to the  
21 provisions of Government Code § 4450.

22           174. Health and Safety Code § 19959 states, in part, that: Every existing  
23 (non-exempt) public accommodation constructed prior to July 1, 1970, which is  
24 altered or structurally repaired, is required to comply with this chapter.

25           175. Hubbard alleges the Pizzeria Uno Facility is a public  
26 accommodation constructed, altered, or repaired in a manner that violates Part  
27 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and  
28



1 that the Pizzeria Uno Facility was not exempt under Health and Safety Code §  
2 19956.

3 176. The Pizzeria Uno Defendants' non-compliance with these  
4 requirements at the Pizzeria Uno Facility aggrieved (or potentially aggrieved)  
5 Hubbard and other persons with physical disabilities. Accordingly, she seeks  
6 injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

### 7 XVIII. THIRTEENTH CLAIM

#### 8 **Americans with Disabilities Act of 1990**

#### 9 Denial of "Full and Equal" Enjoyment and Use

#### 10 (The Mervyn's Facility)

11 177. Hubbard incorporates the allegations contained in paragraphs 1  
12 through 176 for this claim.

13 178. Title III of the ADA holds as a "general rule" that no individual  
14 shall be discriminated against on the basis of disability in the full and equal  
15 enjoyment (or use) of goods, services, facilities, privileges, and accommodations  
16 offered by any person who owns, operates, or leases a place of public  
17 accommodation. 42 U.S.C. § 12182(a).

18 179. The Mervyn's Defendants discriminated against Hubbard by  
19 denying "full and equal enjoyment" and use of the goods, services, facilities,  
20 privileges or accommodations of the Mervyn's Facility during each visit and  
21 each incident of deterrence.

#### 22 Failure to Remove Architectural Barriers in an Existing Facility

23 180. The ADA specifically prohibits failing to remove architectural  
24 barriers, which are structural in nature, in existing facilities where such removal  
25 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term "readily  
26 achievable" is defined as "easily accomplishable and able to be carried out  
27 without much difficulty or expense." *Id.* § 12181(9).



181. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

182. Here, Hubbard alleges that the Mervyn's Defendants can easily remove the architectural barriers at the Mervyn's Facility without much difficulty or expense, and that the Mervyn's Defendants violated the ADA by failing to remove those barriers, when it was readily achievable to do so.

183. In the alternative, if it was not "readily achievable" for the Mervyn's Defendants to remove the Mervyn's Facility's barriers, then the Mervyn's Defendants violated the ADA by failing to make the required services available through alternative methods, which are readily achievable.

#### Failure to Design and Construct an Accessible Facility

184. On information and belief, the Mervyn's Facility was designed or constructed (or both) after January 26, 1992—independently triggering access requirements under Title III of the ADA.

185. The ADA also prohibits designing and constructing facilities for first occupancy after January 26, 1993, that aren't readily accessible to, and usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

186. Here, the Mervyn's Defendants violated the ADA by designing or constructing (or both) the Mervyn's Facility in a manner that was not readily accessible to the physically disabled public—including Hubbard—when it was structurally practical to do so.<sup>20</sup>

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<sup>20</sup> Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

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1                    Failure to Make an Altered Facility Accessible

2            187. On information and belief, the Mervyn's Facility was modified after  
3 January 26, 1992, independently triggering access requirements under the ADA.

4            188. The ADA also requires that facilities altered in a manner that affects  
5 (or could affect) its usability must be made readily accessible to individuals with  
6 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering  
7 an area that contains a facility's primary function also requires adding making  
8 the paths of travel, bathrooms, telephones, and drinking fountains serving that  
9 area accessible to the maximum extent feasible. Id.

10           189. Here, the Mervyn's Defendants altered the Mervyn's Facility in a  
11 manner that violated the ADA and was not readily accessible to the physically  
12 disabled public—including Hubbard—to the maximum extent feasible.

13                    Failure to Modify Existing Policies and Procedures

14           190. The ADA also requires reasonable modifications in policies,  
15 practices, or procedures, when necessary to afford such goods, services,  
16 facilities, or accommodations to individuals with disabilities, unless the entity  
17 can demonstrate that making such modifications would fundamentally alter their  
18 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

19           191. Here, the Mervyn's Defendants violated the ADA by failing to make  
20 reasonable modifications in policies, practices, or procedures at the Mervyn's  
21 Facility, when these modifications were necessary to afford (and would not  
22 fundamentally alter the nature of) these goods, services, facilities, or  
23 accommodations.

24           192. Hubbard seeks all relief available under the ADA (*i.e.*, injunctive  
25 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42  
26 U.S.C. § 12205.

1           193. Hubbard also seeks a finding from this Court (*i.e.*, declaratory  
2 relief) that the Mervyn's Defendants violated the ADA in order to pursue  
3 damages under California's Unruh Civil Rights Act or Disabled Persons Act.

4                                   XIX. FOURTEENTH CLAIM

5                                   **Disabled Persons Act**

6                                   (The Mervyn's Facility)

7           194. Hubbard incorporates the allegations contained in paragraphs 1  
8 through 193 for this claim.

9           195. California Civil Code § 54 states, in part, that: Individuals with  
10 disabilities have the same right as the general public to the full and free use of  
11 the streets, sidewalks, walkways, public buildings and facilities, and other public  
12 places.

13           196. California Civil Code § 54.1 also states, in part, that: Individuals  
14 with disabilities shall be entitled to full and equal access to accommodations,  
15 facilities, telephone facilities, places of public accommodation, and other places  
16 to which the general public is invited.

17           197. Both sections specifically incorporate (by reference) an individual's  
18 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

19           198. Here, the Mervyn's Defendants discriminated against the physically  
20 disabled public—including Hubbard—by denying them full and equal access to  
21 the Mervyn's Facility. The Mervyn's Defendants also violated Hubbard's rights  
22 under the ADA, and, therefore, infringed upon or violated (or both) Hubbard's  
23 rights under the Disabled Persons Act.

24           199. For each offense of the Disabled Persons Act, Hubbard seeks actual  
25 damages (both general and special damages), statutory minimum damages of one  
26 thousand dollars (\$1,000), declaratory relief, and any other remedy available  
27 under California Civil Code § 54.3.



208. Hubbard also seeks to enjoin the Mervyn's Defendants from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

## XXI. SIXTEENTH CLAIM

### **Denial of Full and Equal Access to Public Facilities**

(The Mervyn's Facility)

209. Hubbard incorporates the allegations contained in paragraphs 1 through 208 for this claim.

210. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

211. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

212. Hubbard alleges the Mervyn's Facility is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Mervyn's Facility was not exempt under Health and Safety Code § 19956.

213. The Mervyn's Defendants' non-compliance with these requirements at the Mervyn's Facility aggrieved (or potentially aggrieved) Hubbard and other persons with physical disabilities. Accordingly, she seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

## XXII. SEVENTEENTH CLAIM

### **Americans with Disabilities Act of 1990**

#### Denial of "Full and Equal" Enjoyment and Use

(The Starbucks Facility)

214. Hubbard incorporates the allegations contained in paragraphs 1 through 213 for this claim.

1           215. Title III of the ADA holds as a “general rule” that no individual  
2 shall be discriminated against on the basis of disability in the full and equal  
3 enjoyment (or use) of goods, services, facilities, privileges, and accommodations  
4 offered by any person who owns, operates, or leases a place of public  
5 accommodation. 42 U.S.C. § 12182(a).

6           216. The Starbucks Defendants discriminated against Hubbard by  
7 denying “full and equal enjoyment” and use of the goods, services, facilities,  
8 privileges or accommodations of the Starbucks Facility during each visit and  
9 each incident of deterrence.

10           Failure to Remove Architectural Barriers in an Existing Facility

11           217. The ADA specifically prohibits failing to remove architectural  
12 barriers, which are structural in nature, in existing facilities where such removal  
13 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily  
14 achievable” is defined as “easily accomplishable and able to be carried out  
15 without much difficulty or expense.” *Id.* § 12181(9).

16           218. When an entity can demonstrate that removal of a barrier is not  
17 readily achievable, a failure to make goods, services, facilities, or  
18 accommodations available through alternative methods is also specifically  
19 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

20           219. Here, Hubbard alleges that the Starbucks Defendants can easily  
21 remove the architectural barriers at the Starbucks Facility without much  
22 difficulty or expense, and that Party City violated the ADA by failing to remove  
23 those barriers, when it was readily achievable to do so.

24           220. In the alternative, if it was not “readily achievable” for the  
25 Starbucks Defendants to remove the Starbucks Facility’s barriers, then the  
26 Starbucks Defendants violated the ADA by failing to make the required services  
27 available through alternative methods, which are readily achievable.



1                    Failure to Design and Construct an Accessible Facility

2            221. On information and belief, the Starbucks Facility was designed or  
3 constructed (or both) after January 26, 1992—independently triggering access  
4 requirements under Title III of the ADA.

5            222. The ADA also prohibits designing and constructing facilities for  
6 first occupancy after January 26, 1993, that aren't readily accessible to, and  
7 usable by, individuals with disabilities when it was structurally practicable to do  
8 so. 42 U.S.C. § 12183(a)(1).

9            223. Here, the Starbucks Defendants violated the ADA by designing or  
10 constructing (or both) the Starbucks Facility in a manner that was not readily  
11 accessible to the physically disabled public—including Hubbard—when it was  
12 structurally practical to do so.<sup>21</sup>

13                    Failure to Make an Altered Facility Accessible

14            224. On information and belief, the Starbucks Facility was modified after  
15 January 26, 1992, independently triggering access requirements under the ADA.

16            225. The ADA also requires that facilities altered in a manner that affects  
17 (or could affect) its usability must be made readily accessible to individuals with  
18 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering  
19 an area that contains a facility's primary function also requires adding making  
20 the paths of travel, bathrooms, telephones, and drinking fountains serving that  
21 area accessible to the maximum extent feasible. *Id.*

22            226. Here, the Starbucks Defendants altered the Starbucks Facility in a  
23 manner that violated the ADA and was not readily accessible to the physically  
24 disabled public—including Hubbard—to the maximum extent feasible.

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28            <sup>21</sup> Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a  
private attorney general under either state or federal statutes.

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Plaintiff's Complaint



1                    Failure to Modify Existing Policies and Procedures

2            227. The ADA also requires reasonable modifications in policies,  
3 practices, or procedures, when necessary to afford such goods, services,  
4 facilities, or accommodations to individuals with disabilities, unless the entity  
5 can demonstrate that making such modifications would fundamentally alter their  
6 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

7            228. Here, the Starbucks Defendants violated the ADA by failing to  
8 make reasonable modifications in policies, practices, or procedures at the  
9 Starbucks Facility, when these modifications were necessary to afford (and  
10 would not fundamentally alter the nature of) these goods, services, facilities, or  
11 accommodations.

12           229. Hubbard seeks all relief available under the ADA (*i.e.*, injunctive  
13 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42  
14 U.S.C. § 12205.

15           230. Hubbard also seeks a finding from this Court (*i.e.*, declaratory  
16 relief) that the Starbucks Defendants violated the ADA in order to pursue  
17 damages under California's Unruh Civil Rights Act or Disabled Persons Act.

18                    **XXIII. EIGHTEENTH CLAIM**

19                    **Disabled Persons Act**

20                    (The Starbucks Facility)

21           231. Hubbard incorporates the allegations contained in paragraphs 1  
22 through 230 for this claim.

23           232. California Civil Code § 54 states, in part, that: Individuals with  
24 disabilities have the same right as the general public to the full and free use of  
25 the streets, sidewalks, walkways, public buildings and facilities, and other public  
26 places.

27           233. California Civil Code § 54.1 also states, in part, that: Individuals  
28 with disabilities shall be entitled to full and equal access to accommodations,

1 facilities, telephone facilities, places of public accommodation, and other places  
2 to which the general public is invited.

3 234. Both sections specifically incorporate (by reference) an individual's  
4 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

5 235. Here, the Starbucks Defendants discriminated against the physically  
6 disabled public—including Hubbard—by denying them full and equal access to  
7 the Starbucks Facility. The Starbucks Defendants also violated Hubbard's rights  
8 under the ADA, and, therefore, infringed upon or violated (or both) Hubbard's  
9 rights under the Disabled Persons Act.

10 236. For each offense of the Disabled Persons Act, Hubbard seeks actual  
11 damages (both general and special damages), statutory minimum damages of one  
12 thousand dollars (\$1,000), declaratory relief, and any other remedy available  
13 under California Civil Code § 54.3.

14 237. He also seeks to enjoin the Starbucks Defendants from violating the  
15 Disabled Persons Act (and ADA) under California Civil Code § 55, and to  
16 recover reasonable attorneys' fees and incurred under California Civil Code §§  
17 54.3 and 55.

#### 18 XXIV. NINETEENTH CLAIM

##### 19 **Unruh Civil Rights Act**

##### 20 (The Starbucks Facility)

21 238. Hubbard incorporates the allegations contained in paragraphs 1  
22 through 237 for this claim.

23 239. California Civil Code § 51 states, in part, that: All persons within  
24 the jurisdiction of this state are entitled to the full and equal accommodations,  
25 advantages, facilities, privileges, or services in all business establishments of  
26 every kind whatsoever.



1           248. Health and Safety Code § 19959 states, in part, that: Every existing  
2 (non-exempt) public accommodation constructed prior to July 1, 1970, which is  
3 altered or structurally repaired, is required to comply with this chapter.

4           249. Hubbard alleges the Starbucks Facility is a public accommodation  
5 constructed, altered, or repaired in a manner that violates Part 5.5 of the Health  
6 and Safety Code or Government Code § 4450 (or both), and that the Starbucks  
7 Facility was not exempt under Health and Safety Code § 19956.

8           250. The Starbucks Defendants' non-compliance with these requirements  
9 at the Starbucks Facility aggrieved (or potentially aggrieved) Hubbard and other  
10 persons with physical disabilities. Accordingly, she seeks injunctive relief and  
11 attorney fees pursuant to Health and Safety Code § 19953.

12                                   XXVI. TWENTY-FIRST CLAIM

13                                   **Americans with Disabilities Act of 1990**

14                                   Denial of "Full and Equal" Enjoyment and Use

15                                   (The JCPenney Facility)

16           251. Hubbard incorporates the allegations contained in paragraphs 1  
17 through 250 for this claim.

18           252. Title III of the ADA holds as a "general rule" that no individual  
19 shall be discriminated against on the basis of disability in the full and equal  
20 enjoyment (or use) of goods, services, facilities, privileges, and accommodations  
21 offered by any person who owns, operates, or leases a place of public  
22 accommodation. 42 U.S.C. § 12182(a).

23           253. The JCPenney Defendants discriminated against Hubbard by  
24 denying "full and equal enjoyment" and use of the goods, services, facilities,  
25 privileges or accommodations of the JCPenney Facility during each visit and  
26 each incident of deterrence.

1           Failure to Remove Architectural Barriers in an Existing Facility

2           254. The ADA specifically prohibits failing to remove architectural  
3 barriers, which are structural in nature, in existing facilities where such removal  
4 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily  
5 achievable” is defined as “easily accomplishable and able to be carried out  
6 without much difficulty or expense.” Id. § 12181(9).

7           255. When an entity can demonstrate that removal of a barrier is not  
8 readily achievable, a failure to make goods, services, facilities, or  
9 accommodations available through alternative methods is also specifically  
10 prohibited if these methods are readily achievable. Id. § 12182(b)(2)(A)(v).

11           256. Here, Hubbard alleges that the JCPenney Defendants can easily  
12 remove the architectural barriers at the JCPenney Facility without much  
13 difficulty or expense, and that Mervyn's violated the ADA by failing to remove  
14 those barriers, when it was readily achievable to do so.

15           257. In the alternative, if it was not “readily achievable” for the  
16 JCPenney Defendants to remove the JCPenney Facility’s barriers, then the  
17 JCPenney Defendants violated the ADA by failing to make the required services  
18 available through alternative methods, which are readily achievable.

19           Failure to Design and Construct an Accessible Facility

20           258. On information and belief, the JCPenney Facility was designed or  
21 constructed (or both) after January 26, 1992—independently triggering access  
22 requirements under Title III of the ADA.

23           259. The ADA also prohibits designing and constructing facilities for  
24 first occupancy after January 26, 1993, that aren’t readily accessible to, and  
25 usable by, individuals with disabilities when it was structurally practicable to do  
26 so. 42 U.S.C. § 12183(a)(1).

27           260. Here, the JCPenney Defendants violated the ADA by designing or  
28 constructing (or both) the JCPenney Facility in a manner that was not readily

1 accessible to the physically disabled public—including Hubbard—when it was  
2 structurally practical to do so.<sup>22</sup>

3 Failure to Make an Altered Facility Accessible

4 261. On information and belief, the JCPenney Facility was modified after  
5 January 26, 1992, independently triggering access requirements under the ADA.

6 262. The ADA also requires that facilities altered in a manner that affects  
7 (or could affect) its usability must be made readily accessible to individuals with  
8 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering  
9 an area that contains a facility's primary function also requires adding making  
10 the paths of travel, bathrooms, telephones, and drinking fountains serving that  
11 area accessible to the maximum extent feasible. *Id.*

12 263. Here, the JCPenney Defendants altered the JCPenney Facility in a  
13 manner that violated the ADA and was not readily accessible to the physically  
14 disabled public—including Hubbard—to the maximum extent feasible.

15 Failure to Modify Existing Policies and Procedures

16 264. The ADA also requires reasonable modifications in policies,  
17 practices, or procedures, when necessary to afford such goods, services,  
18 facilities, or accommodations to individuals with disabilities, unless the entity  
19 can demonstrate that making such modifications would fundamentally alter their  
20 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

21 265. Here, the JCPenney Defendants violated the ADA by failing to  
22 make reasonable modifications in policies, practices, or procedures at the  
23 JCPenney Facility, when these modifications were necessary to afford (and  
24 would not fundamentally alter the nature of) these goods, services, facilities, or  
25 accommodations.

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28 <sup>22</sup> Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a  
private attorney general under either state or federal statutes.

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Plaintiff's Complaint

1       266. Hubbard seeks all relief available under the ADA (*i.e.*, injunctive  
2 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42  
3 U.S.C. § 12205.

4       267. Hubbard also seeks a finding from this Court (*i.e.*, declaratory  
5 relief) that the JCPenney Defendants violated the ADA in order to pursue  
6 damages under California's Unruh Civil Rights Act or Disabled Persons Act.

7                               XXVII. TWENTY-SECOND CLAIM

8                               **Disabled Persons Act**

9                               (The JCPenney Facility)

10       268. Hubbard incorporates the allegations contained in paragraphs 1  
11 through 267 for this claim.

12       269. California Civil Code § 54 states, in part, that: Individuals with  
13 disabilities have the same right as the general public to the full and free use of  
14 the streets, sidewalks, walkways, public buildings and facilities, and other public  
15 places.

16       270. California Civil Code § 54.1 also states, in part, that: Individuals  
17 with disabilities shall be entitled to full and equal access to accommodations,  
18 facilities, telephone facilities, places of public accommodation, and other places  
19 to which the general public is invited.

20       271. Both sections specifically incorporate (by reference) an individual's  
21 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

22       272. Here, the JCPenney Defendants discriminated against the physically  
23 disabled public—including Hubbard—by denying them full and equal access to  
24 the JCPenney Facility. The JCPenney Defendants also violated Hubbard's rights  
25 under the ADA, and, therefore, infringed upon or violated (or both) Hubbard's  
26 rights under the Disabled Persons Act.

27       273. For each offense of the Disabled Persons Act, Hubbard seeks actual  
28 damages (both general and special damages), statutory minimum damages of one



1 thousand dollars (\$1,000), declaratory relief, and any other remedy available  
2 under California Civil Code § 54.3.

3 274. She also seeks to enjoin the JCPenney Defendants from violating  
4 the Disabled Persons Act (and ADA) under California Civil Code § 55, and to  
5 recover reasonable attorneys' fees and incurred under California Civil Code §§  
6 54.3 and 55.

7 XXVIII. TWENTY-THIRD CLAIM

8 **Unruh Civil Rights Act**

9 (The JCPenney Facility)

10 275. Hubbard incorporates the allegations contained in paragraphs 1  
11 through 274 for this claim.

12 276. California Civil Code § 51 states, in part, that: All persons within  
13 the jurisdiction of this state are entitled to the full and equal accommodations,  
14 advantages, facilities, privileges, or services in all business establishments of  
15 every kind whatsoever.

16 277. California Civil Code § 51.5 also states, in part, that: No business  
17 establishment of any kind whatsoever shall discriminate against any person in  
18 this state because of the disability of the person.

19 278. California Civil Code § 51(f) specifically incorporates (by  
20 reference) an individual's rights under the ADA into the Unruh Act.

21 279. The JCPenney Defendants' aforementioned acts and omissions  
22 denied the physically disabled public—including Hubbard—full and equal  
23 accommodations, advantages, facilities, privileges and services in a business  
24 establishment (because of their physical disability).

25 280. These acts and omissions (including the ones that violate the ADA)  
26 denied, aided or incited a denial, or discriminated against Hubbard by violating  
27 the Unruh Act.

1       281. Hubbard was damaged by the JCPenney Defendants' wrongful  
2 conduct, and seeks statutory minimum damages of four thousand dollars  
3 (\$4,000) for each offense.

4       282. Hubbard also seeks to enjoin the JCPenney Defendants from  
5 violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and  
6 costs incurred under California Civil Code § 52(a).

7                               XXIX. TWENTY-FOURTH CLAIM

8                               **Denial of Full and Equal Access to Public Facilities**

9                               (The JCPenney Facility)

10       283. Hubbard incorporates the allegations contained in paragraphs 1  
11 through 282 for this claim.

12       284. Health and Safety Code § 19955(a) states, in part, that: California  
13 public accommodations or facilities (built with private funds) shall adhere to the  
14 provisions of Government Code § 4450.

15       285. Health and Safety Code § 19959 states, in part, that: Every existing  
16 (non-exempt) public accommodation constructed prior to July 1, 1970, which is  
17 altered or structurally repaired, is required to comply with this chapter.

18       286. Hubbard alleges the JCPenney Facility is a public accommodation  
19 constructed, altered, or repaired in a manner that violates Part 5.5 of the Health  
20 and Safety Code or Government Code § 4450 (or both), and that the JCPenney  
21 Facility was not exempt under Health and Safety Code § 19956.

22       287. The JCPenney Defendants' non-compliance with these requirements  
23 at the JCPenney Facility aggrieved (or potentially aggrieved) Hubbard and other  
24 persons with physical disabilities. Accordingly, she seeks injunctive relief and  
25 attorney fees pursuant to Health and Safety Code § 19953.

1 XXX. TWENTY-FIFTH CLAIM

2 **Americans with Disabilities Act of 1990**

3 Denial of "Full and Equal" Enjoyment and Use

4 (The Subway Facility)

5 288. Hubbard incorporates the allegations contained in paragraphs 1  
6 through 287 for this claim.

7 289. Title III of the ADA holds as a "general rule" that no individual  
8 shall be discriminated against on the basis of disability in the full and equal  
9 enjoyment (or use) of goods, services, facilities, privileges, and accommodations  
10 offered by any person who owns, operates, or leases a place of public  
11 accommodation. 42 U.S.C. § 12182(a).

12 290. The Subway Defendants discriminated against Hubbard by denying  
13 "full and equal enjoyment" and use of the goods, services, facilities, privileges or  
14 accommodations of the Subway Facility during each visit and each incident of  
15 deterrence.

16 Failure to Remove Architectural Barriers in an Existing Facility

17 291. The ADA specifically prohibits failing to remove architectural  
18 barriers, which are structural in nature, in existing facilities where such removal  
19 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term "readily  
20 achievable" is defined as "easily accomplishable and able to be carried out  
21 without much difficulty or expense." *Id.* § 12181(9).

22 292. When an entity can demonstrate that removal of a barrier is not  
23 readily achievable, a failure to make goods, services, facilities, or  
24 accommodations available through alternative methods is also specifically  
25 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

26 293. Here, Hubbard alleges that the Subway Defendants can easily  
27 remove the architectural barriers at the Subway Facility without much difficulty  
28

1 or expense, and that the Subway Defendants violated the ADA by failing to  
2 remove those barriers, when it was readily achievable to do so.

3 294. In the alternative, if it was not “readily achievable” for the Subway  
4 Defendants to remove the Subway Facility’s barriers, then the Subway  
5 Defendants violated the ADA by failing to make the required services available  
6 through alternative methods, which are readily achievable.

7 Failure to Design and Construct an Accessible Facility

8 295. On information and belief, the Subway Facility was designed or  
9 constructed (or both) after January 26, 1992—independently triggering access  
10 requirements under Title III of the ADA.

11 296. The ADA also prohibits designing and constructing facilities for  
12 first occupancy after January 26, 1993, that aren’t readily accessible to, and  
13 usable by, individuals with disabilities when it was structurally practicable to do  
14 so. 42 U.S.C. § 12183(a)(1).

15 297. Here, the Subway Defendants violated the ADA by designing or  
16 constructing (or both) the Subway Facility in a manner that was not readily  
17 accessible to the physically disabled public—including Hubbard—when it was  
18 structurally practical to do so.<sup>23</sup>

19 Failure to Make an Altered Facility Accessible

20 298. On information and belief, the Subway Facility was modified after  
21 January 26, 1992, independently triggering access requirements under the ADA.

22 299. The ADA also requires that facilities altered in a manner that affects  
23 (or could affect) its usability must be made readily accessible to individuals with  
24 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering  
25 an area that contains a facility’s primary function also requires adding making  
26

27  
28 <sup>23</sup> Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a  
private attorney general under either state or federal statutes.

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1 the paths of travel, bathrooms, telephones, and drinking fountains serving that  
2 area accessible to the maximum extent feasible. Id.

3 300. Here, the Subway Defendants altered the Subway Facility in a  
4 manner that violated the ADA and was not readily accessible to the physically  
5 disabled public—including Hubbard—to the maximum extent feasible.

6 Failure to Modify Existing Policies and Procedures

7 301. The ADA also requires reasonable modifications in policies,  
8 practices, or procedures, when necessary to afford such goods, services,  
9 facilities, or accommodations to individuals with disabilities, unless the entity  
10 can demonstrate that making such modifications would fundamentally alter their  
11 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

12 302. Here, the Subway Defendants violated the ADA by failing to make  
13 reasonable modifications in policies, practices, or procedures at the Subway  
14 Facility, when these modifications were necessary to afford (and would not  
15 fundamentally alter the nature of) these goods, services, facilities, or  
16 accommodations.

17 303. Hubbard seeks all relief available under the ADA (*i.e.*, injunctive  
18 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42  
19 U.S.C. § 12205.

20 304. Hubbard also seeks a finding from this Court (*i.e.*, declaratory  
21 relief) that the Subway Defendants violated the ADA in order to pursue damages  
22 under California's Unruh Civil Rights Act or Disabled Persons Act.

23 XXXI. TWENTY-SIXTH CLAIM

24 **Disabled Persons Act**

25 (The Subway Facility)

26 305. Hubbard incorporates the allegations contained in paragraphs 1  
27 through 304 for this claim.



1           313. California Civil Code § 51 states, in part, that: All persons within  
2 the jurisdiction of this state are entitled to the full and equal accommodations,  
3 advantages, facilities, privileges, or services in all business establishments of  
4 every kind whatsoever.

5           314. California Civil Code § 51.5 also states, in part, that: No business  
6 establishment of any kind whatsoever shall discriminate against any person in  
7 this state because of the disability of the person.

8           315. California Civil Code § 51(f) specifically incorporates (by  
9 reference) an individual's rights under the ADA into the Unruh Act.

10          316. The Subway Defendants' aforementioned acts and omissions denied  
11 the physically disabled public—including Hubbard—full and equal  
12 accommodations, advantages, facilities, privileges and services in a business  
13 establishment (because of their physical disability).

14          317. These acts and omissions (including the ones that violate the ADA)  
15 denied, aided or incited a denial, or discriminated against Hubbard by violating  
16 the Unruh Act.

17          318. Hubbard was damaged by the Subway Defendants' wrongful  
18 conduct, and seeks statutory minimum damages of four thousand dollars  
19 (\$4,000) for each offense.

20          319. Hubbard also seeks to enjoin the Subway Defendants from violating  
21 the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs  
22 incurred under California Civil Code § 52(a).

### 23                               XXXIII. TWENTY-EIGHTH CLAIM

#### 24                               **Denial of Full and Equal Access to Public Facilities**

25                               (The Subway Facility)

26          320. Hubbard incorporates the allegations contained in paragraphs 1  
27 through 319 for this claim.



1           321. Health and Safety Code § 19955(a) states, in part, that: California  
2 public accommodations or facilities (built with private funds) shall adhere to the  
3 provisions of Government Code § 4450.

4           322. Health and Safety Code § 19959 states, in part, that: Every existing  
5 (non-exempt) public accommodation constructed prior to July 1, 1970, which is  
6 altered or structurally repaired, is required to comply with this chapter.

7           323. Hubbard alleges the Subway Facility is a public accommodation  
8 constructed, altered, or repaired in a manner that violates Part 5.5 of the Health  
9 and Safety Code or Government Code § 4450 (or both), and that the Subway  
10 Facility was not exempt under Health and Safety Code § 19956.

11           324. The Subway Defendants' non-compliance with these requirements  
12 at the Subway Facility aggrieved (or potentially aggrieved) Hubbard and other  
13 persons with physical disabilities. Accordingly, she seeks injunctive relief and  
14 attorney fees pursuant to Health and Safety Code § 19953.

15                               XXXIV. TWENTY-NINTH CLAIM

16                               **Americans with Disabilities Act of 1990**

17                               Denial of "Full and Equal" Enjoyment and Use

18                               (The Panera Bread Facility)

19           325. Hubbard incorporates the allegations contained in paragraphs 1  
20 through 324 for this claim.

21           326. Title III of the ADA holds as a "general rule" that no individual  
22 shall be discriminated against on the basis of disability in the full and equal  
23 enjoyment (or use) of goods, services, facilities, privileges, and accommodations  
24 offered by any person who owns, operates, or leases a place of public  
25 accommodation. 42 U.S.C. § 12182(a).

26           327. The Panera Bread Defendants discriminated against Hubbard by  
27 denying "full and equal enjoyment" and use of the goods, services, facilities,  
28

1 privileges or accommodations of the Panera Bread Facility during each visit and  
2 each incident of deterrence.

3 Failure to Remove Architectural Barriers in an Existing Facility

4 328. The ADA specifically prohibits failing to remove architectural  
5 barriers, which are structural in nature, in existing facilities where such removal  
6 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily  
7 achievable” is defined as “easily accomplishable and able to be carried out  
8 without much difficulty or expense.” *Id.* § 12181(9).

9 329. When an entity can demonstrate that removal of a barrier is not  
10 readily achievable, a failure to make goods, services, facilities, or  
11 accommodations available through alternative methods is also specifically  
12 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

13 330. Here, Hubbard alleges that the Panera Bread Defendants can easily  
14 remove the architectural barriers at the Panera Bread Facility without much  
15 difficulty or expense, and that the Panera Bread Defendants violated the ADA by  
16 failing to remove those barriers, when it was readily achievable to do so.

17 331. In the alternative, if it was not “readily achievable” for the Panera  
18 Bread Defendants to remove the Panera Bread Facility’s barriers, then the Panera  
19 Bread Defendants violated the ADA by failing to make the required services  
20 available through alternative methods, which are readily achievable.

21 Failure to Design and Construct an Accessible Facility

22 332. On information and belief, the Panera Bread Facility was designed  
23 or constructed (or both) after January 26, 1992—independently triggering access  
24 requirements under Title III of the ADA.

25 333. The ADA also prohibits designing and constructing facilities for  
26 first occupancy after January 26, 1993, that aren’t readily accessible to, and  
27 usable by, individuals with disabilities when it was structurally practicable to do  
28 so. 42 U.S.C. § 12183(a)(1).

1           334. Here, the Panera Bread Defendants violated the ADA by designing  
2 or constructing (or both) the Panera Bread Facility in a manner that was not  
3 readily accessible to the physically disabled public—including Hubbard—when  
4 it was structurally practical to do so.<sup>24</sup>

5                           Failure to Make an Altered Facility Accessible

6           335. On information and belief, the Panera Bread Facility was modified  
7 after January 26, 1992, independently triggering access requirements under the  
8 ADA.

9           336. The ADA also requires that facilities altered in a manner that affects  
10 (or could affect) its usability must be made readily accessible to individuals with  
11 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering  
12 an area that contains a facility's primary function also requires adding making  
13 the paths of travel, bathrooms, telephones, and drinking fountains serving that  
14 area accessible to the maximum extent feasible. *Id.*

15           337. Here, the Panera Bread Defendants altered the Panera Bread Facility  
16 in a manner that violated the ADA and was not readily accessible to the  
17 physically disabled public—including Hubbard—to the maximum extent  
18 feasible.

19                           Failure to Modify Existing Policies and Procedures

20           338. The ADA also requires reasonable modifications in policies,  
21 practices, or procedures, when necessary to afford such goods, services,  
22 facilities, or accommodations to individuals with disabilities, unless the entity  
23 can demonstrate that making such modifications would fundamentally alter their  
24 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

25           339. Here, the Panera Bread Defendants violated the ADA by failing to  
26 make reasonable modifications in policies, practices, or procedures at the Panera  
27

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28 <sup>24</sup> Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

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1 Bread Facility, when these modifications were necessary to afford (and would  
2 not fundamentally alter the nature of) these goods, services, facilities, or  
3 accommodations.

4 340. Hubbard seeks all relief available under the ADA (*i.e.*, injunctive  
5 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42  
6 U.S.C. § 12205.

7 341. Hubbard also seeks a finding from this Court (*i.e.*, declaratory  
8 relief) that the Panera Bread Defendants violated the ADA in order to pursue  
9 damages under California's Unruh Civil Rights Act or Disabled Persons Act.

10 XXXV. THIRTIETH CLAIM

11 **Disabled Persons Act**

12 (The Subway Facility)

13 342. Hubbard incorporates the allegations contained in paragraphs 1  
14 through 341 for this claim.

15 343. California Civil Code § 54 states, in part, that: Individuals with  
16 disabilities have the same right as the general public to the full and free use of  
17 the streets, sidewalks, walkways, public buildings and facilities, and other public  
18 places.

19 344. California Civil Code § 54.1 also states, in part, that: Individuals  
20 with disabilities shall be entitled to full and equal access to accommodations,  
21 facilities, telephone facilities, places of public accommodation, and other places  
22 to which the general public is invited.

23 345. Both sections specifically incorporate (by reference) an individual's  
24 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

25 346. Here, the Panera Bread Defendants discriminated against the  
26 physically disabled public—including Hubbard—by denying them full and equal  
27 access to the Panera Bread Facility. The Panera Bread Defendants also violated  
28

1 Hubbard's rights under the ADA, and, therefore, infringed upon or violated (or  
2 both) Hubbard's rights under the Disabled Persons Act.

3 347. For each offense of the Disabled Persons Act, Hubbard seeks actual  
4 damages (both general and special damages), statutory minimum damages of one  
5 thousand dollars (\$1,000), declaratory relief, and any other remedy available  
6 under California Civil Code § 54.3.

7 348. She also seeks to enjoin the Panera Bread Defendants from violating  
8 the Disabled Persons Act (and ADA) under California Civil Code § 55, and to  
9 recover reasonable attorneys' fees and incurred under California Civil Code §§  
10 54.3 and 55.

### 11 XXXVI. THIRTY-FIRST CLAIM

#### 12 Unruh Civil Rights Act

#### 13 (The Panera Bread Facility)

14 349. Hubbard incorporates the allegations contained in paragraphs 1  
15 through 348 for this claim.

16 350. California Civil Code § 51 states, in part, that: All persons within  
17 the jurisdiction of this state are entitled to the full and equal accommodations,  
18 advantages, facilities, privileges, or services in all business establishments of  
19 every kind whatsoever.

20 351. California Civil Code § 51.5 also states, in part, that: No business  
21 establishment of any kind whatsoever shall discriminate against any person in  
22 this state because of the disability of the person.

23 352. California Civil Code § 51(f) specifically incorporates (by  
24 reference) an individual's rights under the ADA into the Unruh Act.

25 353. The Panera Bread Defendants' aforementioned acts and omissions  
26 denied the physically disabled public—including Hubbard—full and equal  
27 accommodations, advantages, facilities, privileges and services in a business  
28 establishment (because of their physical disability).

1           354. These acts and omissions (including the ones that violate the ADA)  
2 denied, aided or incited a denial, or discriminated against Hubbard by violating  
3 the Unruh Act.

4           355. Hubbard was damaged by the Panera Bread Defendants' wrongful  
5 conduct, and seeks statutory minimum damages of four thousand dollars  
6 (\$4,000) for each offense.

7           356. Hubbard also seeks to enjoin the Panera Bread Defendants from  
8 violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and  
9 costs incurred under California Civil Code § 52(a).

10                               XXXVII. THIRTY-SECOND CLAIM

11                               **Denial of Full and Equal Access to Public Facilities**

12                               (The Panera Bread Facility)

13           357. Hubbard incorporates the allegations contained in paragraphs 1  
14 through 356 for this claim.

15           358. Health and Safety Code § 19955(a) states, in part, that: California  
16 public accommodations or facilities (built with private funds) shall adhere to the  
17 provisions of Government Code § 4450.

18           359. Health and Safety Code § 19959 states, in part, that: Every existing  
19 (non-exempt) public accommodation constructed prior to July 1, 1970, which is  
20 altered or structurally repaired, is required to comply with this chapter.

21           360. Hubbard alleges the Panera Bread Facility is a public  
22 accommodation constructed, altered, or repaired in a manner that violates Part  
23 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and  
24 that the Panera Bread Facility was not exempt under Health and Safety Code §  
25 19956.

26           361. The Panera Bread Defendants' non-compliance with these  
27 requirements at the Panera Bread Facility aggrieved (or potentially aggrieved)  
28

Hubbard and other persons with physical disabilities. Accordingly, she seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

XXXVIII. PRAYER FOR RELIEF

WHEREFORE, Hubbard prays judgment against the Chula Vista Center Defendant for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that the Chula Vista Center Defendant violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.<sup>25</sup>
5. Interest at the legal rate from the date of the filing of this action.

XXXIX. PRAYER FOR RELIEF

WHEREFORE, Hubbard prays judgment against the Jamba Juice Defendants for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that the Jamba Juice Defendants violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.<sup>26</sup>
5. Interest at the legal rate from the date of the filing of this action.

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<sup>25</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

<sup>26</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

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XXXX. PRAYER FOR RELIEF

WHEREFORE, Hubbard prays judgment against the Pizzeria Uno Defendants for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that the Pizzeria Uno Defendants violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.<sup>27</sup>
5. Interest at the legal rate from the date of the filing of this action.

XXXXI. PRAYER FOR RELIEF

WHEREFORE, Hubbard prays judgment against the Mervyn's Defendants for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that the Mervyn's Defendants violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.<sup>28</sup>
5. Interest at the legal rate from the date of the filing of this action.

XXXXII. PRAYER FOR RELIEF

WHEREFORE, Hubbard prays judgment against the Starbucks Defendants for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.

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<sup>27</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

<sup>28</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

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2. Declaratory relief that the Starbucks Defendants violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.

3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.

4. Attorneys' fees, litigation expenses, and costs of suit.<sup>29</sup>

5. Interest at the legal rate from the date of the filing of this action.

#### XXXXIII. PRAYER FOR RELIEF

WHEREFORE, Hubbard prays judgment against the JCPenney Defendants for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.

2. Declaratory relief that the JCPenney Defendants violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.

3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.

4. Attorneys' fees, litigation expenses, and costs of suit.<sup>30</sup>

5. Interest at the legal rate from the date of the filing of this action.

#### XXXXIV. PRAYER FOR RELIEF

WHEREFORE, Hubbard prays judgment against the Subway Defendants for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.

2. Declaratory relief that the Subway Defendants violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.

3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.

4. Attorneys' fees, litigation expenses, and costs of suit.<sup>31</sup>

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<sup>29</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

<sup>30</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

<sup>31</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

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5. Interest at the legal rate from the date of the filing of this action.

XXXXV. PRAYER FOR RELIEF

WHEREFORE, Hubbard prays judgment against the Panera Bread Defendants for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.

2. Declaratory relief that the Panera Bread Defendants violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.

3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.

4. Attorneys' fees, litigation expenses, and costs of suit.<sup>32</sup>

5. Interest at the legal rate from the date of the filing of this action.

DATED: March 12, 2008

DISABLED ADVOCACY GROUP, APLC



LYNN HUBBARD, III

Attorney for Plaintiff, Barbara Hubbard

<sup>32</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.  
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Plaintiff's Complaint

**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 148750 - SH**

**March 13, 2008  
16:21:07**

**Civ Fil Non-Pris**

USAO #.: 08CV0471

Judge.: JOHN A HOUSTON

Amount.:

\$350.00 CK

Check#.: BC20601

**Total-> \$350.00**

**FROM: HUBBARD V. C.V. CENTER INC ET**

JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

BARBARA HUBBARD

## DEFENDANTS

SEE ATTACHED LIST

(b) County of Residence of First Listed Plaintiff SAN DIEGO  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

DEPUTY

(c) Attorney's (Firm Name, Address, and Telephone Number)

DISABLED ADVOCACY GROUP, APLC (530) 895-3252  
12 WILLIAMSBURG LANE CHICO, CA 95926

'08 CV 471 JAH LSP

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- |   |                                |                                |   |                                |                                |
|---|--------------------------------|--------------------------------|---|--------------------------------|--------------------------------|
| Citizen of This State                   | PTF <input type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2     | <input type="checkbox"/> 2     | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5     | <input type="checkbox"/> 5     |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3     | <input type="checkbox"/> 3     | Foreign Nation  | <input type="checkbox"/> 6     | <input type="checkbox"/> 6     |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. Section 12101, et seq.  
Brief description of cause:  
Ongoing violations of the ADA Construction Standards

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

03/12/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 148750 AMOUNT \$350

APPLYING IFP

JUDGE

MAG. JUDGE

21 3/13/08

CR

**DEFENDANT LIST**

- 1.) C.V. Center, Inc.
- 2.) Jamba Juice Company dba Jamba Juice #603
- 3.) Casual Dining Services, Inc. dba Pizzeria Uno
- 4.) Mervyn's, LLC
- 5.) Starbucks Corporation dba Starbucks Coffee #6632
- 6.) J.C. Penney Company, Inc. dba JCPenney #1274
- 7.) Serler, Inc. dba Subway #31595
- 8.) Manna Development Group, LLC dba Panera Bread Café  
#4284

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

**(b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

**(c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.